U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34830194

Date: NOV. 26, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an engineer specializing in spacecraft life support systems, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit the United States. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x), including items such as awards, published material in certain media, and scholarly articles. If those standards do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

The Petitioner has worked for [redacted] space program since 1991. The Petitioner works "in the design, development, and integration of life support and water supply systems . . . that allow the filtering, recycling, and reusing [of] wastewater [on] spacecrafts and space stations," such as "the space toilet ordered by NASA which was located [on] the International Space Station (ISS)." The Petitioner has intermittently visited the United States since 2007 as an A-2 nonimmigrant employee of a foreign government. He has remained in the United States since his most recent entry in December 2022. A U.S. company seeking to build a private, commercial space station seeks to employ the Petitioner.

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have satisfied eight of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner met two of the criteria, pertaining to awards and judging. On appeal, the Petitioner asserts that he also meets the other six claimed criteria.

Upon review of the record, we conclude that the Petitioner has satisfied the requirements of at least one more criterion. The regulation at 8 C.F.R. § 204.5(h)(3)(vi) calls for evidence of the individual's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The Petitioner submitted copies of several of his scholarly articles, published in journals and in conference proceedings. The Director did not dispute the scholarly nature of the articles, but concluded that that the Petitioner's "evidence . . . does not show that the articles were published in professional publications, trade publications, or other major media." The Director cited the *Adjudicator's Field Manual*, Chapter 22.2(i)(l)(A), which required circulation data for all published scholarly articles.

On appeal, the Petitioner correctly observes that "as of May 2020, USCIS retired its *Adjudicator's Field Manual*" and replaced it with the *USCIS Policy Manual*.

The superseding guidance acknowledges that the wording of 8 C.F.R. § 204.5(h)(3)(vi) does not require professional publications to be "major." Instead, a "relevant factor" would be "the intended audience." *See* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. The record sufficiently establishes that the intended audience for the Petitioner's published articles and published conference presentations consists of professionals in the aerospace field.

The evidence of record establishes that the Petitioner is the author of scholarly articles that have appeared in professional publications. This is sufficient to satisfy the regulatory requirements.

Because the above discussion shows that the Petitioner has satisfied at least three of the criteria at 8 C.F.R. § 204.5(h)(3), which is sufficient for the case to proceed to a final merits determination, we need not discuss the other claimed criteria, and therefore reserve discussion on them.[1]

As discussed above, we conclude that the Petitioner submitted the required initial evidence. The next step is to determine whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim; that he is one of the small percentage at the very top of the field of endeavor; and that his achievements have been recognized in the field through extensive documentation. A final merits determination involves analyzing an individual's accomplishments and weighing the totality of the evidence to determine if their successes are sufficient to demonstrate extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20, *and see generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).

We will remand the matter in order for the Director to make a final merits determination.

In doing so, the Director must bear in mind that the determination involves consideration of the totality of the record, rather than simply re-evaluating the evidence submitted regarding the individual underlying criteria. The Director must determine whether the record as a whole shows that the Petitioner has achieved sustained national or international acclaim.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).